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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,354	12/21/2000	Don Middleton	NC25767	1696

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EXAMINER

EL HADY, NABIL M

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/746,354

Applicant(s)

MIDDLETON, DON

Examiner

Nabil M El-Hady

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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1. Claims 1-16 are pending in this application.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. The following words or phrases in the claims are not clearly understood and render the corresponding claims indefinite:

a) "invoking said application within the storage capacity of the mobile device", claim 1, lines 9-10, and "downloading said programs from", claim 1, lines 14-15. It is unclear to the examiner if invoking said application (lines 9-10) and downloading said applications (lines 14-15) mean the same thing, or they have different implications. The meaning is unclear specially when downloading may be performed within the storage capacity of the mobile device, but not the invoking, which is not performed within the storage capacity of the mobile device;

b) "receiving input signal", claim 1, line 9, and claim 11, line 8, it is unclear how the input signal is received, received from, or received at;

c)" based on said control parameters as defined by said input signal", claim 1, line 13, it is unclear if the control parameters and input signal are the same, or how they are related;

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d) It is unclear if the method of claim 1 is performed within the mobile device, the network storage location or within a separate entity in the network, while it is noted that said applications are downloaded from the network into the mobile device.

e) It is unclear if the method of claim 11 is performed within the mobile device, the network storage location or within a separate entity in the network, while it is noted that said applications are loaded into the mobile device, it is unclear from where said applications are loaded.

B. There is insufficient antecedent basis for:

- a) "said application", claim 1, line 7; and line 9.
- b) "said application is", claim 4, lines 4-5;
- c) "said application", claim 6, lines 3-4, lines 5-6, and lines 6-7;
- d) "said application", claim 7, line 3;
- e) "said application", claim 8, line 2, lines 4-5, lines 6-7, and line 8;
- f) "said application", claim 9, line 3, lines 4-5, and lines 5-6;
- g) "said application", claim 10, lines 2-3, and line 4;
- h) "said application", claim 14, lines 6-7, line 8

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-16 are rejected under 35 U.S.C. 102(e) / 35 U.S.C. 103(a) as being anticipated by / unpatentable over Smith (US 6,553,468).

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6. As to claim 11, Smith discloses the invention as claimed including a method for managing applications in a mobile device having storage capacity including a secondary storage location and a main memory (col. 3, lines 32-34; and col. 7, lines 44-45), the method comprising the steps of defining control parameters, said control parameters defining at least a storage configuration for applications within the storage capacity of the mobile device (col. 7, lines 21-24), said application to be downloaded into the mobile device (col. 7, lines 24-32); receiving input signal for invoking said application in the mobile device (col. 7, lines 55-62); performing storage management of said application based on said control parameters (col. 7, lines 21-24) as defined by said input data (control parameters of the storage is defined by what operational features on a device have been mastered by a userwhat access the device has to a communication network, col. 7, lines 55-62, these are considered input data that define the control parameters), said storage management including downloading said application into the mobile device; and executing said selected program from the main memory of said mobile device (col. 7, lines 21-32).

7. As to claim 1, the claim is rejected for the same reasons as claim 11 above. In addition, Smith discloses the mobile device operating in a communications network having a network storage location (col. 3, lines 24-27; and 404, 407, Fig. 4), wherein said applications are stored in the network storage location; and said applications are downloaded from the network into the mobile device (col. 3, lines 11-17).

8. As to claim 14, the claim is rejected for the same reasons as claims 1 and 11 above. In addition, Smith discloses an apparatus for managing applications in a mobile device having storage capacity including a secondary storage location and a main memory (col. 3, lines 32-34;

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and col. 7, lines 44-45), the apparatus comprising an input device for defining control parameters (inherent in col. 7, lines 55-62 where control parameters of the storage is defined by what operational features on a device have been mastered by a userwhat access the device has to a communication network), said control parameters defining at least a storage configuration for applications within the storage capacity of the mobile device (col. 7, lines 33-62), said application to be loaded into the mobile device (col. 7, lines 21-32); said input device receiving input for invoking said application in the mobile device (col. 7, lines 55-62); and a processor coupled to said input device for performing storage management of said application based on said control parameters as defined by said input data (inherent in the disclosure of Smith a processor to work with the on-board control 402 of Fig. 4 to manage the storage of the mobile device), said storage management including loading said application into the mobile device, and executing said application from the main memory of said mobile device (col. 7, lines 21-32).

9. As to claims 2, 12, and 15, Smith discloses receiving input data at the mobile device, said input data defining said control parameters (input data that define the control parameters are characterized by operational features on a device that have been mastered by a userwhat access the device has to a communication network, col. 7, lines 55-62).

10. As to claims 3, 13, and 16, Smith discloses loading a launcher program from the communications network into the mobile device (col. 3, lines 15-16, 34-40).

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11. As to claims 4, and 5, Smith discloses determining that said selected program is not stored in the main memory of the mobile device, or not stored in the secondary storage location of the mobile device (col. 3, lines 18-27).

12. As to claim 6, Smith discloses determining that said control parameters (as related to user activity and mastering of the operation of the device) indicate that said selected program is to be stored in the secondary storage location of the mobile device and loading said selected program into the secondary storage location of the mobile device (col. 3, lines 11-17)

13. As to claim 7, Smith discloses loading said selected program from the secondary storage location into the main memory of the mobile device (inherent in Fig. 2, changing storage requirement as in Fig. 2, requires moving data from the secondary storage to the main memory for execution).

14. As to claims 8 and 9, Smith determines that the selected program has been corrupted before reloading it again (program is overwritten or corrupted when the device is considered recycled, which necessitates reloading of basic instructions, col. 2, lines 41-57; and col. 7, lines 40-54).

15. As to claim 10, Smith discloses the control parameters comprises a storage priority for said selected program and storing said selected program in the main memory of the mobile device until main memory capacity is needed (storage priority is inherent in defining parameter related to input data as defined by user activity and mastering of the operation of the device; see col. 2, lines 26-40).

16. Applicant's arguments filed 10/28/2004 have been fully considered but they are not persuasive. Therefore rejection of claims 1-16 is maintained.

17. In the remarks, applicants argued in substance that (1), Smith does not provide control parameters associated with applications, (2) Smith does not define hierarchal user system to maximize memory for applications, (3) Smith does not teach a system to check for an existing application before requesting downloading of the application from the network.

18. Examiner respectfully traverses applicants' remarks.

19. As to point (1), Smith's disclosure of input data that define control parameters defining storage configuration is defined by what operational features on a mobile device have been mastered by a user ... what access the device has to a communication network, as discloses in col. 7, lines 55-62. Said control parameters defining at least a storage configuration for applications within the storage capacity of the mobile device, col. 7, lines 33-62. User's activity, operational features and mastering of the operation of the device are interpreted by the examiner as said control parameters.

20. As to point (2), In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., hierarchal user system to maximize memory for applications) are not recited in the rejected independent claims 1, 11, and 14. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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21. As to point (3), Smith discloses checking the existing application before downloading it again (application is overwritten or corrupted when the device is considered recycled, which necessitates reloading of basic instructions, col. 2, lines 41-57; and col. 7, lines 40-54).

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nabil M El-Hady whose telephone number is (571) 272-3963. The examiner can normally be reached on 9:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 1, 2005



Nabil El-Hady, Ph.D, M.B.A.
Primary Patent Examiner
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